UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/627,375	07/28/2000	Huan-Yu Su	01827.0018.00US00	2740

25700 7590 02/23/2004

FARJAMI & FARJAMI LLP
16148 SAND CANYON
IRVINE, CA 92618

EXAMINER	
HAN, QI	

ART UNIT	PAPER NUMBER
2654	17

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/627,375	SU, HUAN-YU	
	Examiner	Art Unit	
	Qi Han	2654	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☐ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

RICHEMOND DORVIL
SUPERVISORY PATENT EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: applicant's arguments (paper 16, page 3-5, regarding rejection(s) under USC 35 103(a)) are not persuasive, based on the rejection submitted and the prior art recited in final (see detail in claim rejections in the final office action).

In response to applicant's argument regarding independent claim 1 (and claim 28) that the prior art "teaches away from the limitation of claim 1" (Paper 16, page 3, paragraph 3) and "does not disclose, teach or suggest that an average output rate is approximately equal to the target average data rate" (Paper 16, page 4, paragraph 2), the examiner has a different view of the prior art teachings and the claim interpretations. As stated in the final rejection, the combined prior arts disclose every limitation claimed (see detail in the rejection of the final office action, Paper 15, pages 3-5). It is noted that Smolik discloses variety of ways of transmission rate reduction and adjustment for speech coder (vocoder) in a wireless communication system, in which the rate (corresponding to output rate) can be controlled accordingly, based on speech coding algorithms (column 5, line 24 through column 6, line 55), and capacity/quality control criteria of the system and service level of each subscriber unit (column 2, lines 13-39, and column 9, line 47 though column 10, line 36); and Bender specifically disclose average frame rate (interpreted as average output rate) (column 5, lines 51-65) for providing related traffic and control parameter(s) to speech coder in the system, so that combined the system offers flexibility in various degrees of the rate deduction and adjustment, including that "an average output rate is approximately equal to the target average data rate".

In another view of Smolik's disclosure, Smolik teaches the call capacity enhancement process and speech coder rate reduction sub-process (column 9, line 47 though column 10, line 36), so that output average rate tend to catch the average target rate, which can be broadly interpreted as the claimed "an average output rate is approximately equal to the target average data rate".

In response to applicant's argument that the examiner's conclusion of obviousness "is based upon pure hindsight" (Paper 16, page 5, paragraph 1), examiner disagrees with applicant. It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).